

## APPEAL NO. 010460

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on January 25, 2001. The hearing officer determined that the appellant (claimant) had not made a good faith search for employment for either his seventh or eighth quarter of eligibility for supplemental income benefits (SIBs) and thus was not entitled to SIBs for either quarter. She further found that his unemployment in either quarter was not the direct result of his impairment. The claimant appeals the finding as to the seventh quarter, arguing that he had only three weeks to look for work. The respondent (carrier) asks that the decision be affirmed.

### DECISION

We affirm the hearing officer's decision.

The hearing officer did not err in finding that the claimant was not entitled to SIBs for his seventh quarter. Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102(d) (Rule 130.102(d)) defines good faith as follows:

- (d) Good Faith Effort. An injured employee has made a good faith effort to obtain employment commensurate with the employee's ability to work if the employee:
  - (1) has returned to work in a position which is relatively equal to the injured employee's ability to work;
  - (2) has been enrolled in, and satisfactorily participated in, a full time vocational rehabilitation program sponsored by the Texas Rehabilitation Commission during the qualifying period;
  - (3) has during the qualifying period been enrolled in, and satisfactorily participated in, a full time vocational rehabilitation program provided by a private provider that is included in the Registry of Private Providers of Vocational Rehabilitation Services;
  - (4) has been unable to perform any type of work in any capacity, has provided a narrative report from a doctor which specifically explains how the injury causes a total inability to work, and no other records show that the injured employee is able to return to work; or

- (5) has provided sufficient documentation as described in subsection (e) of this section to show that he or she has made a good faith effort to obtain employment.

The qualifying period for the seventh quarter ran from February 12 through May 11, 2000. The claimant argued that he had only three weeks to seek employment. He said that he refused to use the vocational counselor provided by the carrier because he felt that this person humiliated him in interviews. The claimant began his search when he received an April 24, 2000, report of a required medical examination (RME) doctor, Dr. D, stating that the claimant had the ability to work. This was based on a March 13, 2000, medical examination, where Dr. D noted symptom magnification, but Dr. D stated he would render his final opinion once a functional capacity evaluation was received. A videotape was also reviewed. Dr. D concluded that the claimant had the ability to work, with some restrictions on lifting. The claimant's treating doctor responded that the claimant was unable to work and should not climb in and out of a truck due to significant low back pain. The hearing officer's determination that the medical evidence did not support a total inability to work is supported by the record.

Regardless of when the claimant received a report from an RME doctor, the claimant had the primary obligation under the 1989 Act to search for employment commensurate with his ability to work unless he could submit medical evidence as described in Rule 130.102(d)(4). The hearing officer is the sole judge of the relevance, materiality, weight, and credibility of the evidence presented at the hearing. Section 410.165(a). The decision should not be set aside because different inferences and conclusions may be drawn upon review, even when the record contains evidence that would lend itself to different inferences. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ). The hearing officer's decision and order are affirmed.

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Susan M. Kelley  
Appeals Judge

CONCUR:

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Gary L. Kilgore  
Appeals Judge

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Philip F. O'Neill  
Appeals Judge